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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of)	FIL ORG ID.: 96348
)	
THE COMMISSIONER OF BUSINESS OVERSIGHT,)	CITATION INCLUDING:
)	
Complainant,)	1) DESIST AND REFRAIN ORDER;
)	
v.)	2) ASSESSMENT OF ADMINISTRATIVE PENALTY; AND
)	
PCJV USA, LLC,)	3) CLAIM FOR ANCILLARY RELIEF
)	
Respondent.)	(CORPORATIONS CODE SECTIONS 31406 AND 31408)

Jan Lynn Owen, the Commissioner of Business Oversight of the State of California
("Commissioner"), finds the following:

I.

STATEMENT OF FACTS

- The Commissioner regulates the offer and sale of franchises under the Franchise Investment Law (Corp. Code §31000 et seq.) ("FIL").
- PCJV USA, LLC ("PCJV") is a Delaware limited liability company, formed on July 16, 2010. PCJV has a principal place of business at 6380 Wilshire Boulevard, Suite 1100, Los Angeles,

1 California 90048. PCJV engages in the business of offering and selling franchises under the name
2 “Potato Corner.”

3 3. On February 14, 2011, PCJV filed its initial application for registration to offer and sell
4 franchises in California. This application was approved by the Department of Business Oversight
5 (“Department”) and became effective on April 15, 2011.

6 4. In March 2011, Potato Corner Global Company Limited, Hong Kong, NKM
7 Capital Group, LLC and PCJV jointly filed Notices of Violation under section 31303 of
8 the FIL, acknowledging that Potato Corner Global Company Limited, Hong Kong and
9 NKM Capital Group, LLC sold three (3) Potato Corner franchises in California, in or
10 around April 2010, without being registered with the Department.

11 5. On August 20, 2012, PCJV filed a renewal registration for the offer and sale of Potato Corner
12 franchises in California. On August 23, 2012, the Department issued the registration with the
13 Commissioner’s condition to registration that initial franchise fees could not be collected from new
14 California franchisees until after the new franchisees commenced doing business.

15 6. Following the 2012 registration, PCJV collected initial franchise fees from twelve (12)
16 California franchisees prior to their commencing business, in violation of the Commissioner’s
17 condition to registration.

18 7. On September 13, 2013 PCJV filed a renewal registration for the offer and sale of Potato
19 Corner franchises in California. On November 25, 2013, the Department again conditionally issued
20 the registration with the requirement that initial franchise fees could not be collected from California
21 franchisees until after the new franchisees commenced doing business. PCJV failed to disclose to the
22 Department that it had violated this condition twelve (12) times during its previous registration period.

23 8. On November 22, 2013, PCJV filed a Notice of Violation under section 31303 of the FIL
24 because it attended the West Coast Franchise Expo in October 2013, where it sold three (3) franchises
25 after the date its prior registration lapsed and while its renewal application was pending with the
26 Department. The Notice of Violation form was approved by the Department on November 25, 2013.

27 9. On February 14, 2014, PCJV filed another Notice of Violation, for violating the
28 Commissioner’s condition to registration for one (1) of five (5) franchises sold to California

franchisees in 2013. The form of the Notice of Violation was approved by the Commissioner, and PCJV paid a two thousand five hundred dollar (\$2,500.00) penalty to the Department on April 16, 2014. PCJV failed to disclose to the Department that it had violated the condition to its registration four (4) additional times during the 2013 registration period (in addition to the twelve previous violations) by collecting initial franchise fees from all five (5) California franchisees prior to their commencing business.

10. PCJV failed to inform its California franchisees that purchased franchises in 2013 and 2014 about the two Notice of Violations filed with the Department in 2012 and 2013.

11. PCJV's auditors issued restated financial statements for 2012, 2013 and 2014 on October 20, 2015 after PCJV's 2014 registration had lapsed. The restated financial statements were not provided to the franchisees that purchased their franchises in 2012, 2013, and 2014.

II.

CITATION WITH DESIST AND REFRAIN ORDER AND ADMINISTRATIVE PENALTY

12. Corporations Code section 31406 provides:

(a) If, upon inspection or investigation, based upon a complaint or otherwise, the commissioner has cause to believe that a person is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the commissioner. The application shall include a certified copy of the final order of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order.

13. FIL section 31110 states it shall be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered under this part or exempted. PCJV sold three (3) franchises in October 2013 while it was unregistered. PCJV violated section 31110 three (3) times. Pursuant to Corporations Code section 31406, PCJV is hereby ordered to desist and refrain from offering or selling franchises in California unless registered or exempt.

14. Under FIL section 31203, it is “unlawful for any person to violate any order of the commissioner or conditions to the effectiveness of the registration of the offer or sale of franchises.” In at least seventeen (17) instances, PCJV violated section 31203 by accepting initial franchise fees from franchisees before those franchisees had opened for business, despite the Commissioner’s condition to the effectiveness of PCJV’s registration not to do so. PCJV is hereby ordered to desist and refrain from further violations of FIL section 31203.

15. Pursuant to FIL section 31201, it is “unlawful for any person to offer or sell a franchise in this state by means of any written or oral communication...which includes an untrue statement of a material fact or omits to state a material fact...” PCJV violated section 31201 by misrepresenting material facts to seventeen (17) franchisees by taking the initial franchise fees in violation of the Commissioner’s condition to registration. In addition, PCJV failed to disclose to all potential franchisees the Notice of Violations it had filed with the Department in 2013 and 2014, in violation of section 31201. PCJV is hereby ordered to desist and refrain from further violations of FIL section 31201.

16. PCJV also failed to disclose to the Commissioner that it violated the condition to registration in sixteen (16) of the seventeen (17) instances until October 21, 2015. This is a violation of section 31200, which states that it is “unlawful for any person willfully to make any untrue statement of a material fact...or willfully omit to state in any such application, notice, or report any material fact which is required to be stated therein, or fail to notify the Commissioner of any material change as required by section 31123.” PCJV is hereby ordered to desist and refrain from further violations of FIL section 31200.

17. FIL section 31123 states that a franchisor “shall promptly notify the commissioner in writing, by an application to amend the registration, or any material change in the information contained in the

1 application as originally submitted, amended or renewed.” PCJV’s auditors restated financial
2 statements for years 2012, 2013 and 2014 on October 20, 2015 after PCJV’s 2014 registration had
3 lapsed. PCJV failed to disclose these restated financial statements with the Commissioner until
4 November 25, 2015, in violation of section 31123. PCJV is hereby ordered to desist and refrain from
5 further violations of FIL section 31123.

6 18. PCJV is hereby assessed and ordered to pay an administrative penalty of twenty thousand
7 dollars (\$20,000.00) (“Penalty”) based on the three (3) violations of section 31110, seventeen (17)
8 violations of section 31203, nineteen (19) violations of section 31201, sixteen (16) violations of
9 section 31200, and three (3) violations of section 31123 of the FIL. The Penalty shall be paid by check
10 and made payable to the Department of Business Oversight. The Penalty check shall be received by
11 Joanne Ross no later than fifteen (15) calendar days from PCJV’s Receipt from the Department of this
12 Citation with Desist and Refrain Order and Assessment of Administrative Penalty; Claim for Ancillary
13 Relief (“Order”) signed by the Commissioner. The Order shall be deemed “received” when the
14 Department emails the executed Order to bkurtz@lewithhackman.com.

15 19. The penalty payment by PCJV should be sent via traceable method to: Joanne Ross, Senior
16 Counsel, Enforcement Division, Department of Business Oversight, 1515 K Street, Suite 200,
17 Sacramento, CA 95814.

18 III.

19 ANCILLARY RELIEF

20 20. Corporations Code section 31408 provides:

21 (a) If the commissioner determines it is in the public interest, the commissioner
22 may include in any administrative action brought under this division, including a
23 stop order, a claim for ancillary relief, including, but not limited to, a claim for
24 rescission, restitution or disgorgement or damages on behalf of the persons injured
25 by the act or practice constituting the subject matter of the action, and the
26 administrative law judge shall have jurisdiction to award additional relief. The
27 person affected may be required to attend remedial education, as directed by the
28 commissioner.

(b) In an administrative action brought under this part the commissioner is entitled
to recover costs, which in the discretion of the administrative law judge may
include any amount representing reasonable attorney's fees and investigative
expenses for the services rendered, for deposit into the State Corporations Fund for
the use of the Department of Business Oversight.

21. Under section 31408, the Commissioner may direct the franchisor to attend remedial education and may request additional ancillary relief as part of any administrative action. Within thirty (30) days from the date of PCJV's Receipt from the Department of this Order signed by the Commissioner, PCJV is hereby directed to contract with an independent monitor ("Monitor") who shall have no prior familial, financial, or professional affiliation with PCJV or any of its senior management level employees. PCJV shall provide the name and contact information of the Monitor to the Department within forty-five (45) days from the date of PCJV's Receipt from the Department of this Order signed by the Commissioner. The Monitor shall be a licensed attorney with experience in franchise transactions in California. The Monitor shall be responsible for assisting PCJV to develop and implement policies and procedures, governing books, records and accounts of its franchise sales. The Monitor shall review PCJV's practices and procedures annually for three (3) consecutive years. On or before October 1 of 2017, 2018 and 2019, the Monitor shall submit a report on PCJV's development and implementation of these policies and procedures. The report shall be submitted to: Joanne Ross, Senior Counsel, Enforcement Division, 1515 K Street, Suite 200, Sacramento, California 95814. This three-year term for the Monitor shall be reviewed by the Commissioner on each annual anniversary date of the parties' execution of this Citation. This three-year term for the Monitor may be shortened by the Commissioner in her discretion if PCJV has demonstrated compliance with the FIL and this Citation.

In addition, PCJV is directed to have an experienced franchise attorney or attorneys provide to Guy Koren, President and Chief Operating Officer, and Amir Jacoby, Director, as well as any other officers or employees involved in offering or selling franchises, an eight-hour, in-person training in the area of FIL compliance matters, including but not limited to the offering and selling of franchises ("Training"). PCJV must obtain prior approval of the providers of the Training from the Commissioner within thirty (30) days from the date of PCJV's Receipt from the Department of this Order signed by the Commissioner. Proof of the trainees' attendance at the Training for eight (8) hours, via affidavit by the trainer(s) and each trainee, shall be received by the Department no later than
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1 March 6, 2017 by sending via traceable method to: Joanne Ross, Senior Counsel, Enforcement
2 Division, 1515 K Street, Suite 200, Sacramento, California 95814.

3 Dated: December 13, 2016
4 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

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6
7 By _____
8 MARY ANN SMITH
9 Deputy Commissioner
10 Enforcement Division
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